

REMARKS

Claims 1-89 are pending in the application. The Applicants filed a preliminary amendment on June 22, 2003 to add claims 19-89. Also, the Applicants filed a preliminary amendment on October 31, 2002 to amend the title to "A Stimulation Enabled Retail Management Tutorial System." Claims 1-4, 9, 10, 12, 13, 18-26, 28-33, 36-38, 40-47, 49-58, 61, 63-67, 70, 72-76, 79-85, and 88-89 are rejected. Claims 5-8, 11, 14-17, 27, 34-35, 39, 48, 59-60, 62, 68-69, 71, 77-78, and 86-87 are objected to.

Claims Rejections – 35 USC §101

Claims 1-4, 9, 10, 12, 13, 18-26, 28-33, 36-38, 40-47, 49-58, 61, 63-67, 70, 72-76, 79-85, and 88-89 are rejected by the Office Action under 35 USC §101 as claiming the same invention as that of claims 1-19 of prior U.S. Patent No. 6,003,021 (Zadik), i.e., a double patenting rejection.

On page 3, the Office Action alleges that claim 1 is "anticipated by" claim 1 and a section of the specification in Zadik. The MPEP describes the proper standard for determining whether a double patenting rejection is proper. In particular, section 804 indicates that:

In determining whether a statutory basis for a double patenting rejection exists, the question to be asked is: Is the same invention being claimed twice? **35 USC §101** prevents two patents from issuing on the same invention. "Same invention" means identical subject matter.

The Applicant respectfully submits that whether or not any of the present claims is "anticipated" by Zadik is not relevant to whether or not a rejection under 35 USC §101 is proper. Moreover, as stated in MPEP §804, in reference to determining statutory double patenting (February 2003 Revision, page 800-20. Emphasis added.):

A reliable test for double patenting under 35 USC §101 is whether a **claim in the application** could be literally infringed without literally infringing a **corresponding claim in a patent**. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, **then identical subject matter is not defined by both claims and statutory double patenting would not exist**. For example, the invention defined by a claim reciting a compound having a "halogen" substitute is not identical to or substantively the same as a claim reciting the same compound except having a "chlorine" substitute in place of the halogen because "halogen" is broader than chlorine."

In the example provided in the MPEP and recited above, clearly a "halogen" would be anticipated by "chlorine." However, they are not identical, so a rejection under 35 USC §101 would not be proper.

Referring to claim 1, the Office Action improperly combined claim 1 of Zadik with the specification (column 13, line 52-56) of Zadik in its argument of double patenting and used the improper "anticipation" standard. The Applicant respectfully submits that when the present claim 1 is compared to only the claims of Zadik, it is clear that claim 1 is not claiming the identical subject matter of any of the claims in Zadik. The Applicant accordingly respectfully submits that the rejection of claim 1 under 35 USC §101 is improper and should be withdrawn.

The rejections of claims 10, 19, 28, 36, 45, 54, 63, 72, and 81 are improper for similar reasons.

Claims 2-4, 9, 12, 13, 18, 20-26, 29-33, 37-38, 40-44, 46-47, 49-53, 55-58, 61, 64-67, 70, 73-76, 79-80, 82-85, and 88-89 depend from independent claims 1, 10, 19, 28, 36, 45, 54, 63, 72, and 81 and thus include the same elements as the corresponding independent claims and do not claim the same invention as claimed in Zadik. Moreover, referring to dependent claims 2, 3, 4, 9, 12, 13, 18, 20-26, 29-33, 37-38, 40-44, 46-47, 49-53, 55, 57-58, 64, 66-67 73-76, 80, 82-85, and 89, the Office Action cites additional material in the specification, abstract or drawings of Zadik and does not show corresponding claims in Zadik that claim the same invention as these dependent claims. Thus, the Applicants request reconsideration of claims 2-4, 9, 12, 13, 18, 20-26, 29-33, 37-38, 40-44, 46-47, 49-53, 55-58, 61, 64-67, 70, 73-76, 79-80, 82-85, and 88-89.

Allowable Subject Matter

Claims 5-8, 11, 14-17, 27, 34-35, 39, 48, 59-60, 62, 68-69, 71, 77-78, and 86-87 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

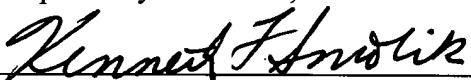
CONCLUSIONS

All objections and rejections have been addressed. Hence, it is respectfully submitted that the present application is in condition for allowance, and a notice to that effect is earnestly solicited.

Date: September 30, 2003

Respectfully submitted,

By:



Kenneth F. Smolik

Registration No. 44,344

BANNER & WITCOFF, LTD.

10 South Wacker Drive

Suite 3000

Chicago, Illinois 60606

Direct Line: 312-463-5419

Facsimile: 312-463-5001